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As discussed during the September 15, 2011 conference call among representatives of the New York State Board of Elections, the NYS Attorney General's office, the Federal Voting Assistance Program and the US Department of Justice, please find the following supplemental information in support of the MOVE Act application waiver from the mandate to transmit ballots 45 days before the September 11, 2012 Primary Election.

Necessity for Waiver Request – September 11, 2012 Primary Election:

FVAP and DOJ requested clarification concerning the New York State's undue hardship and the necessity for this one-year waiver application. They also requested information as to the NYS Constitution's delegation to the Legislature, the duty to redistrict and reapportion the State and whether such a provision represented a constitutional impediment to meeting the 45 day pre-primary election deadline for UOCAVA voters - one of the three qualifying conditions for a waiver.

On Friday, September 16, 2012, Jeffrey M. Dvorin, Bureau Chief of the Albany Litigation Bureau, Office of the NYS Attorney General provided the following response to the US Justice Department:

"New York didn't have 2010 Federal census data -- upon which it must rely in drawing district lines -- until April of this year. Article III, section 4 of the New York State Constitution requires that the most recent federal census shall, with certain exceptions, "be controlling as to the number of inhabitants in the state or any part thereof for the purposes of apportionment" of state legislative districts. The state Legislative Task Force on Demographic Research and Reapportionment (LATFOR) is statutorily charged with analyzing that data and any other information necessary to make recommendations to the legislature regarding reapportionment. New York Legislative Law, Section 83-m. LATFOR is currently engaged in that process, which will continue over several months. It would have been impossible for LATFOR to complete its task and for the Legislature to then consider and act upon its recommendation prior to close of session."

Further, an action for declaratory judgment has been brought by nine New York State Senators, and nine of their constituents, challenging the constitutionality of Part XX of Chapter 57 of the Laws of 2010, now codified as New York Correction Law § 71(8) and New York Legislative Law § 83-m(13). [Little, et al v. LATFOR, and NYS Department of Corrections et al,

Sup. Ct, Albany County Index No. 2310-11]. This lawsuit challenges the way in which New York's prison inmate population should be counted. The resolution to this matter, therefore, is a necessary and critical component of any meaningful establishment of district boundaries. Following the existing regime (the new lines being established shortly before petitioning), ballots cannot be generated until we know what the lines are and thus who is running for each office, who is entitled to vote, where a voter is to vote, and to also provide reasonable means for ballot access. Thus, for reasons of constitutional requirements and litigation, the State of New York will suffer from the subsequent and inherent delays therefrom.

The creation of a 2012 political calendar that governs all ballot access activities cannot begin until redistricting is completed. The district lines are the necessary starting point of ballot access. Given the looming uncertainties regarding the process of drawing the district lines, it is possible that further litigation and additional line-drawing by a new commission or by the courts may occur. It is also critical to note that in this redistricting process, NYS will be eliminating two congressional districts, reducing the total from 29 to 27. In light of the above, it is inconceivable that an election could be conducted on the old lines.

Ensuring Jurisdictional Compliance:

Heightened level of interaction and plan for communication:

FVAP requested clarification of New York's waiver application (Section J) relating to a heightened level of interaction and checks between the State Board and each jurisdiction to monitor transmission compliance. In 2011, the State Board provided a number of additional communications to county boards of elections which included information on how to prepare and transmit voting materials for each UOCAVA voter via their selected preference for delivery, along with sample documents, deadline reminders and the surveys that were to be completed (pre- and post-election). Such communications were provided to those county boards conducting the Special Election for the 26th CD earlier this year, the September 13th Special Election for the 9th CD and several NYS Assembly seats, and to all county boards prior to the September 13th Primary Election. A similar communication is planned prior to the November 8th General Election. Please see Attachment A for a summary of the 2011 dates for each communication provided to county boards and the survey responses received thus far.

Of particular note, please see Attachment A, pages 1-33 and 1-34 for a statistical review of Military and Special Federal Voters in the 26th CD Special Election. The data gathered from the seven county boards that were involved in the Special Election for the 26th Congressional District showed a marked improvement in compliance and enfranchisement of UOCAVA voters

over the statewide data for the 2010 General Election. All ballots were transmitted no later than 45 days before the election. The overall percentage of ballots sent that were returned to county boards increased almost 6 percentage points to 54.67%. For military voters, the increase was almost double that of the overall number, improving almost 12 percentage points. Of those ballots that were received, almost 88% of them were counted, improving almost 9 percentage points over 2010. The percentage of ballots rejected dropped almost by half of 2010's number; from 20.89% in 2010 to 12.25% in 2011. Of the 43 ballots that were rejected, only 3 were rejected due to a late postmark, and all from Special Federal voters. Of the 40 that were returned as undeliverable, 33 came from Monroe County. When questioned about the disproportionately large number of undeliverable ballots in comparison with other counties, Monroe County answered that they had been transitioning between a new and a legacy voter registration system, and 30 of the 33 absentee applications should have been purged, but the voter records were left intact when special election ballots were transmitted. Without the 30 returned undeliverable ballots, the rejection rate would have been 4.05%.

Ensuring Jurisdictional Compliance - outreach efforts

FVAP Director Bob Carey confirmed that the MOVE Act requires that FVAP, in coordination with the US Postal Service, provide expedited return mail for military voters using the military mail system in *regularly scheduled general elections for federal office*. New York State's plan anticipates FVAP will continue to meet this MOVE Act obligation.

Express return mail for all overseas voters is cost prohibitive¹. New York State is working with ScytI and OVF to provide information and links on the SecureBallot system for use by all overseas voters who would be responsible to pay for such expedited delivery service.

¹ The cost we calculated for expedited return of ballots for both military and special federal voters is based on a few assumptions. Looking at the previous presidential year, we are estimating approximately 85,000 UOCAVA voters, 60,000 special federal and 25,000 military. We currently do not have enough data to approximate how many of those military voters are overseas or domestic.

Assuming an 86.5% return rate (the general absentee return rate from 2008; FVAP cites matching or exceeding this figure as a strategic goal), we would estimate the cost of expedited return mail to be over \$1.8 million for the general election.

At this time, there is no way to know which parties may have a primary election next year, but if we use the current percentage of UOCAVA voters enrolled in a major party as an assumption, the cost for expedited return mail for the primary election would be over \$1.1 million, bringing the total estimated cost for expedited return mail to almost \$3 million. Based on underlying assumptions of the calculations, FVAP and the US Postal Service, it is estimated, would have responsibility for only \$135,000 of that amount for the return of ballots by overseas military voters using the military mail system in the general election for federal office.

As a component of its aggressive outreach efforts above and beyond that which is already provided for in statute, the State Board is actively working to develop a communication plan as outlined on page 14 of the waiver application. The plan, which is to be finalized in early 2012, will also include a plan to communicate with each military and special federal voter to provide information on the online resources available, to inform such voters of the availability to select electronic notification or facsimile transmission of blank ballots, how to verify the current status of their voter registration record and absentee ballot application, the availability of the federal post card application to update their voter registration record, the availability of the federal write-in absentee ballot, and how each voter may use the online services to track the receipt by the respective county boards of elections of a voted ballot. Any input from FVAP concerning elements New York State may wish to include in the communication plan is welcomed.

Conclusion:

The granting of the waiver as requested clears the most responsible path for New York to follow. Surely the goal of timely receipt of ballots must be paired with and preceded by the production of accurate ballots placed in the hands of duly registered voters, ensuring their votes counted and their voices are heard. This can only be accomplished if adequate time is allocated to determine and establish what parts of New York are to constitute each political subdivision, so that potential candidates and voters are equally and fairly served by both the letter of the law, and indeed the true spirit behind it.